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C O N F I D E N T I A L SECTION 01 OF 04 BANGKOK 006399

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TAGS: PGOV PHUM PREL PINR KDEM TH  
SUBJECT: GETTING TO A NEW THAI CONSTITUTION

Classified By: DCM ALEX A. ARVIZU. REASON 1.4 (B,D)

¶1. (C) Summary. The new Thai constitution will only be the fourth (of 18) that involves broader participation in its production and the first to be approved by public referendum. Estimates for how long this will take vary widely--the last two constitutions each took 10 months from start to finish. Accelerating the timetable may be possible, but at the potential cost of public participation and careful review. In fact, the drafting committee will already be under a six month deadline to finish the bulk of the work--if they miss this, the coup leaders of the Council on National Security (CNS) get to write their own charter with no public role. At this point, a consensus has to yet to emerge on how this constitution will differ from its predecessor. End Summary.

A HABIT THAT'S HARD TO BREAK

¶2. (SBU) The new, yet-to-be-drafted constitution will be Thailand's 18th since the first was written in 1933. All but a handful have lasted less than a few years. Before the 1990s, constitutions were temporary writs of legitimacy for whichever military faction was in control at the time. Indeed, the constitutions of the 1930s-50s were proxies for the tug-of-war between monarchists and their opponents and rival factions in the military.

¶3. (SBU) Only three charters have involved broader participation in the drafting process--most have been written by a small clutch of confidantes. In 1974, violent clashes between the military and students calling for political change forced the PM to resign. His successor--a Royal Privy Councilor--began work on a new constitution, but wanted to avoid using his disgraced predecessor's hand-picked parliament to approve it. Instead, a collection of some 200 "notable public figures" appointed by the King produced a new charter, which only lasted four years.

¶4. (SBU) The 1991 constitution--written under the direction of the last junta to oust a civilian PM--was the first

charter actively debated in public and subject to a longer, more transparent process. While the drafting committee was relatively independent from the military government, the junta's hand-picked legislature made several controversial changes to the document before passing it in late 1991, thus undermining its legitimacy.

**15.** (SBU) The 1997 constitution, the first actually written by a democratically elected government, was widely hailed as the best (and longest) so far, and involved regular public participation and debate in the drafting process. The drafting committee was composed of one representative from each of the 76 provinces and 23 "experts" nominated by universities and law societies--all chosen by the democratically elected parliament of the time. While the end product was widely respected, the process was rocky. The drafting committee was accused of being inefficient and given to longwinded debate on esoteric topics (indeed, the 1997 constitution seems to cover every right imaginable).

#### THE CURRENT PLAN

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**16.** (U) Under the current, interim constitution, a just-appointed 17-member committee of civil servants and legal experts will select a 2,000 member National People's Assembly (NPA) that will, within seven days of meeting, select 200 of its own members as candidates for the Constitution Drafting Assembly (CDA). This NPA will select 100 of these 200 candidates to serve as the CDA (Note: Members of the legislature cannot serve concurrently in the CDA. End Note). The CDA, in turn, will select 25 people (not necessarily members) to serve on the Constitution Drafting

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Committee (CDC); GEN Sonthi and the coup-makers will appoint an additional 10 members.

**17.** (U) The 35 member CDC will draft the constitution and present it to the public and 100 member CDA--with explicit justifications for any changes from the 1997 charter--for a 30 day review period. At this point, CDA members are allowed, on a limited basis, to make amendments to the charter. If the 100 member CDA approves the new constitution by a simple majority, a public referendum would be held 15-30 days later. If a simple majority of the population approves the new constitution, it is sent to the King for signature and promulgation. If the charter fails the referendum, the CNS would select a prior constitution, and amend it in the next 30 days, before passing it to the King for promulgation.

#### HOW LONG WILL THIS TAKE?

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**18.** (SBU) The interim constitution says that the 100 member CDA has 180 days from its first meeting to the completion of the final text. (Note: If it fails to do so in this period, the coup leaders again get to pick a previous constitution and amend it within thirty days.) The referendum has to be held within 15-30 days after that. Royal approval and promulgation should take about fifteen days (in 1997, the constitution had to be hand written and prepared in triplicate for the King's signature). Overall, from the time the CDA begins work, it could take as long as 7-8 months to draft and approve the new constitution. This estimate, however, does not include the time spent selecting members for the NPA and CDA, which are not subject to any specific timetable under the interim charter.

**19.** (C) Estimates about how long it will take to have a new constitution vary among government leaders and outside observers. Defense Ministry Permsec and CNS Secretary General Winai told the Ambassador on October 11 that Thai legal experts recommended a period of eight months and fifteen days to complete the new constitution. This estimate appears to be based on an old formulation for drafting the

constitution. In the initial briefings to the international community after the coup, Winai also laid out this timetable.

The interim constitution actually lopped at least 6 weeks off that process, by including the time for public consultation and amending the draft within the 6 month limit, rather than taking place after six months of drafting. (Note: many government interlocutors, including Winai seem confused about the timetable; this may be a reflection of how overtaxed the CNS and government are at this point. End note.) Activist Gothom Arya told poloff on October 16 that the drafting committee would need about three months to "get the ball rolling" and another three months to write the actual draft.

CAN IT MOVE FASTER?

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¶10. (C) Our contacts are divided on this question. Gothom believes that the process can be shortened, but not by much. Respected constitutional scholar and Vice Rector at Thammasat University, Dr. Prinya Thaewanarumitkul says that it is unlikely that the interim government will be able to significantly alter the process laid forth in the interim constitution, and given that process, it is doubtful that elections could be held in less than one year.

¶11. (C) It is not clear whether it would be faster for the 100 member CDA to merely update the 1997 constitution, or start with a clean slate. When asked about this, General Winai admitted that the commission would likely base its work on the 1997 document, because starting from scratch would take too long. This seems consistent with the interim constitution, which requires the CDC to justify differences

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between their product and the 1997 charter. In contrast, Thai Rak Thai leader Chaturon Chaiseng, in a meeting with the Ambassador on October 17, expressed doubt that the drafters would work off of the 1997 charter. According to Chaturon, the drafters would soon find that too many provisions were interrelated and it would prove too difficult to pick and choose elements, trying to preserve some while discarding others. It would be simpler to start from scratch, he said.

¶12. (C) Either way, a lot will depend on the CDA's work ethic. The 1991 drafting body, working twice a week, was able to complete its draft in 143 days, but with minimal public input. The 1997 commission was officially given 240 days to complete its draft, including comprehensive outreach efforts to the public; it completed the draft under a grueling schedule within 210 days or so. Both efforts included lengthy parliamentary reviews and debates: four and half months in 1991, but only a month and a half in 1997. All told, both the 1991 and 1997 charters took about 10 months to draft and approve. The process for the new constitution avoids the legislative approval step, but adds at least 15-30 days for a public referendum to approve the document.

CAREFUL WHAT YOU WISH FOR

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¶13. (C) Indeed the new CDA members will already be under the gun to complete the draft in near-record time. If they do not finish it--including 30 days of public consultations--within six months, the CNS gets to write and approve its own constitution without public participation, a setup that Thai civil society would strongly resist. We are reminded that the push to accelerate approval of the 1991 charter and hold a new election following that coup led to the inclusion of several controversial, pro-military amendments--as well as outright contradictions between clauses--that inspired deeply felt public grievances which eventually bubbled over into the bloody clashes of May 1992. In contrast, the drafting committee in 1997 was widely criticized for its plodding pace and for starting from

scratch. But in hewing to the principles of careful deliberation and public participation, it provided Thailand's best constitution to date.

WHAT WILL THEY ACTUALLY DO?

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¶14. (C) Timing aside, the substance of the new charter is a major question. CNS chairman Sonthi and his cohorts have justified the coup in the name of political reform and a fight against the corrupting influence of money politics, but there is little consensus on how these sentiments translate into new laws. (Note: This is not new, shortly before the drafting of the 1997 charter, a respected poll found that nearly 40% of Thai people didn't understand what 'political reform' actually stood for. End Note.) Indeed, the 1997 charter, while establishing a stronger chief executive and punishing the party-switching that bedeviled past governments, established a number of independent institutions, such as the National Counter Corruption and Election Commissions to provide a check on the PM's power. Thaksin was clever (and rich) enough to subvert these institutions. A new formulation that maintains a strong PM (avoiding the shaky coalitions of the 1990s) while subjecting executive power to sufficient checks has yet to be elucidated (though Thaksin did joke to the Ambassador before the coup that his opponents simply wanted to add a clause barring anyone with his name from serving as PM.)

IT ALL FALLS DOWN

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¶15. (C) The new constitution may present an opportunity to

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enhance Thai democracy, but that is hardly assured. While the coup makers' desire for "stability" is paramount and their thinly-veiled attacks against the populism of Thaksinomics are frequent, these are unlikely to automatically translate into public support for a constitution that allows for a non-elected PM, or permanent controls on political liberties. Widespread frustration with the failure of the 1997 constitution's directly-elected, but non-partisan Senate (which was anything but), conceivably could prompt a return to a directly appointed upper house of years past. (Note: Only the 1946 and 1997 constitutions provided for a directly elected bicameral legislature. End Note.) On its face, this would not be anti-democratic per se, but giving such an appointed body significant say in the selection of the next PM, or legislation, would be seen by some as a step backwards for Thai democracy.

BEWARE THE TRANSITION CLAUSES

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¶16. (C) Besides the main body of the new charter, a potential flashpoint will be the transition clauses attached at the end of it. These are clauses providing for governmental and legislative continuity during the gap between the promulgation of a charter, the holding of an election, and the entrance of a new government. In the past, these provisions have been used as "temporary" measures to allow for significant deviations from the actual constitution and to permit continued political dominance by the government (usually military) in power at the time of transition. Current Privy Council President Prem used them to extend his rule as PM in the 1980s, and they were a key political football in the drafting of the 1991 constitution. Indeed, the leaders of the 1991 junta were broadly seen as using the transitory clauses to extend their control past the March 1992 elections.

COMMENT

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¶17. (C) When all is said and done, GEN Sonthi and the coup

committee have devised a relatively compact schedule for drafting a new constitution. Indeed, one of the pitfalls in this plan (that already is providing fodder for some conspiracy-theorists) is the penalty for missing the drafting deadline: carte blanche for the generals to write it themselves. Significantly, we detect widespread agreement here that, although there will be little public tolerance for unnecessary delay of the constitution drafting and promulgation timetable, the timetable itself is much less important than the imperative to end up with a charter that is substantially sound. Having had to endure yet another coup, Thais seem to be saying: this time, let's really try to get it right.

BOYCE